IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 217 of 1995

with

CRIMINAL APPEAL No 384 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PASABHAI UGARABHAI CHAMAR
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 217 of 1995
MR PM VYAS for Appellant No. 1
MR KG SHETH, APP for Respondent No. 1
2. Criminal Appeal No. 384 of 1995
MR KG SHETH, APP for Appellant No. 1
MR PM VYAS for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

and

MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant in Criminal Appeal No.217 of 1995 Pashabhai Ugarabhai Chamar was the accused no.1 in Sessions Case No.106 of 1994 before the Additional Sessions Judge, Mehsana. The appellant and Somsinh Punjsinh Parmar who was the accused no.2 were put on trial on the charge of committing the murder of Jadiben, the wife of appellant Pashabhai and trying to destroy the evidence of the crime by throwing the dead body into a canal. The appellant no.1 was charged with the offences punishable under Section 302 and Section 201 and the accused no.2 was charged with the offences punishable under Section 302 and Section 201 read with Section 120-B or Section 34 of the I.P.C. The learned Additional Sessions Judge, by his judgment and order dated 19th January, 1995, convicted the appellant of the offences under Sections 302 and 201 and sentenced him to a life term and a fine of Rs.3000/-, in default, R.I. for six months for the offence under Section 302 and imprisonment for three months and a fine of Rs.500/-, in default, R.I. for 15 days for the offence under Section 201. Both the sentences were ordered to run concurrently. He acquitted the accused no.2 of the offences charged to him.

2. The appellant Pashabhai has filed Criminal Appeal No.217 of 1995 challenging his conviction and sentence. The State of Gujarat has filed Criminal Appeal No.384 of 1995 challenging the acquittal of the accused no.2.

3. The prosecution case was as follows. Both the accused were employed and working in the factory of Indocem India Pvt. Ltd. situated in GIDC, Chhatral, Taluka Kalol, District Mehsana. There are rooms in the premises of the factory in which the workers of the factory live. Both the accused were also living there. The appellant Pashabhai was married to Jadiben. They had two children, one son and one daughter. However, Jadiben was not faithful and she had eloped with someone. Jadiben's sister Shantaben had started living with the appellant. However, about 15 days before the date of the incident, Jadiben had come back to live with the appellant. There was a quarrel because of this between Jadiben and Pashabhai. There was a holiday in the factory on 9th February, 1994. The appellant and his

wife Jadiben left home at about 4 o'clock on that day. Pashabhai had told the watchman Dalpatsinh Lalasinh that they were going to their village. About half an hour after Pashabhai left, the accused no.2 Somsinh also left. On 10th February, 1994, Pashabhai returned alone at 10 o'clock and the accused no.2 Somsinh came back at about 4 o'clock in the afternoon. Pashabhai did not go to work on that day. It is the prosecution case that Head Constable Nareshkumar Meghaji (P.W.5) and Chaheraji Bhikhaji (P.W.6) were on patrolling duty at night on 9th February, 1994. They first went to Dharoi check-post and then they started in a private jeep for Hadol. When they reached Hanumanji Temple near the canal, they saw two persons approaching. They stopped them. They knew accused no.2 since he belonged to village Hadol. The other person, on being questioned, said that he was Pashabhai Ugarabhai and he had said that he was the brother of one Bhikhabhai who was a Jamadar in the police department.

4. On 10th February, 1994, Mahmadbhai Daoodbhai Momin (P.W.4) was going to his field at about 9.30 in the morning. At that time, two women were washing clothes at the canal and they told him that the dead body of a woman had come floating in the canal. Mahmadbhai went to that place. The dead body was brought out and other people of the village also gathered. Abdulrahim Ibrahimbhai (P.W.3) was informed. He informed the Vadnagar Police Station by telephone that a dead body had been found and an entry to that effect was made in the station diary and Head Constable Gulamhusain Amirmiyan was deputed to go to village Molipur where the dead body had been found in the canal. He went there and made an inquest panchnama (Exh.15). An injury was noted on the right side of the abdomen. On the right hand of the deceased, the name Jadiben was tattooed. The clothes on the body of the deceased which were blood-stained were attached.

5. Since there were injuries on the body of the deceased and the mouth was tied with a handkerchief, Gulamhusain Amirmiyan lodged a complaint on the basis that the death was homicidal.

6. On investigation, it was found that Jadiben was the wife of the appellant and daughter of Ramabhai Halabhai. The dead body was identified by Ramabhai. The post-mortem was carried out by Dr. T.M. Setalwad and Dr. A.F. Memon at 3.55 in the afternoon on 10th February, 1994. They found as many as 14 injuries on the body. There were internal injuries on the liver and peritoneum was cut. According to the doctors, the cause

of death was shock due to intra-abdominal haemorrhage which resulted from injury to the vital organ, liver.

7. Both the accused came to be arrested on 13th February, 1994 and a panchnama of the scene of offence, as pointed out by them, was prepared. A knife was discovered from the room in which the appellant was living following the information given by the appellant. It was blood-stained and the report of the Chemical Analyser showed that blood of the same group was found on the knife as was found on the clothes of the deceased. On completion of the investigation, both the accused were chargesheeted and were committed for trial.

8. The learned Additional Sessions Judge found the appellant guilty, as stated earlier, and acquitted the accused no.2.

9. The evidence of Dr. T.M. Sethalwad (Exh.46), who had carried out the post-mortem, shows that there were as many as 14 external injuries, 5 of them were incised wounds and 2 of them being stab wounds on different parts of the body. Injuries no.1 to 7 which were incised and stab wounds were ante-mortem and were possible by a knife, while injuries no.8 to 14 were post-mortem injuries. Peritoneum was cut and there was also a injury to the liver. According to him, the cause of death was shock due to intra-abdominal haemorrhage which had resulted from injury to the vital organ, liver. He said that injuries no.3 and 4 were sufficient to cause death in the ordinary course of nature. His evidence clearly shows that the death was homicidal.

10. The question is who had committed the murder of Jadiben. There is no eye-witness. The case is one of circumstantial evidence. In order to prove that it was the accused who had committed the murder, the prosecution has relied on certain circumstances.

11. It is not in dispute that the dead body which was found was that of Jadiben who was the wife of the appellant. It is also not in dispute that both the accused were employed in a factory of Indocem India Pvt. Ltd. situated in the GIDC estate at Chhatral. The evidence of Miteshkumar Ashwinbhai (P.W.1) who was employed as a Clerk in the said company shows that 9th February, 1994 was a Wednesday and Wednesday is a holiday in the factory. He knew both the accused and said that they were employed in their factory. Houses have been constructed in the premises of the factory for the workers. He produced the muster roll for 9th February,

1994 and 10th February, 1994 at Exhs.27 and 28 which shows that 9th February, 1994 was a holiday and the accused were absent on 10th February, 1994.

12. The next material witness is Dalpatsinh Lalasinh (P.W.7) who was employed as watchman in the factory. He too was living in one of the ordis in the premises of the factory. He said that the appellant was living in the adjacent ordi and the accused no.2 Somsinh was living next to Pashabhai. He said that Pashabhai was living with his wife's sister in the ordi. About 15 days before the date of the incident, the wife of the appellant, deceased Jadiben, also had come back to live with Pashabhai and there was a quarrel between Jadiben and Pashabhai on that count. He was on duty at the gate of the factory on 9th February, 1994. His duty was to keep a watch on the people entering and leaving the factory. Pashabhai and Jadiben left the factory at about 4 o'clock on that day. Pashabhai had told him that he was going to the village. Pashabhai returned alone at 10 o'clock in the morning on the next day. The accused no.2 had left on 9th February, 1994 about half an hour after Pashabhai had left. He returned at 4 o'clock in the afternoon on the next day. Pashabhai did not go to work on 10th February, 1994. All that was suggested in his cross-examination was that Pashabhai had not left with his wife at 4 o'clock. His evidence was, therefore, practically unchallenged and there is no reason to disbelieve the same.

13. Ramabhai Halabhai (P.W.9), the father of deceased Jadiben has stated in his evidence that Jadiben had been married to the appellant and they had two children, one son and one daughter. However, after her marriage, Jadiben was unfaithful and she had eloped with another person. He had not kept any relations with Jadiben for about 12 to 13 months before the date of the incident. The appellant too did not keep any relations with her. Jadiben's younger sister was Shanta and she had no relations with the appellant.

14. Shantaben (P.W.8) was the younger sister of deceased Jadiben. The prosecution case with regard to her was that she often used to go to see the appellant and that he had an affair with her and that the appellant had offered to keep her as his wife and she had agreed. She was living with the appellant as his wife in the room in the premises of the factory. Jadiben had returned on 5th February, 1994 and she had brought her belongings

from Nirma factory where Jadiben was working. They had started living together. It was also the prosecution case that when Jadiben had returned to live with them, Jadiben had picked up a quarrel with her. On 9th February, 1994, the appellant and Jadiben left saying that they were going to village Tavadia. On the next day, Pashabhai returned alone and when she asked him where Jadi was, he told her that she had gone to work in the Nirma factory. When the appellant returned alone on 10th February, 1994 he had given his clothes to her to wash. However, Shantaben, in her evidence, before the court did not support the prosecution and she was declared hostile. She denied that she was living with the appellant. She said that she did not know how Jadiben had died. In her cross-examination, she was contradicted with her statement before the police. The contradictions were subsequently proved.

15. The next circumstance on which the prosecution relied was the discovery of the blood-stained knife at the instance of the appellant. The evidence of Yakubkhan Kamalkhan (P.W.13) shows that he was summoned as a panch at about 12 o'clock on 16th February, 1994 and on the information given by the appellant, they went to the room in which the appellant was living. The appellant brought out a knife from under a trunk near the wall which was seized. There is no reason to disbelieve his evidence. The report of the Chemical Analyser shows that blood of the same group was found on the knife as was found on the clothes of the deceased.

16. The evidence of Police Constable Nareshkumar Meghaji (P.W.5) and Chaheraji Bhikhaji (P.W.6) shows that while they were on patrolling duty at night on 9th February, 1994 and while they were going in a jeep towards village Hadol, they had met two persons, one of whom was accused no.2 who was known to them since he belonged to village Hadol. On being questioned, the other person had identified himself as Pashabhai, the brother of Jamadar Bhikhabhai. They identified both the accused in the court. Thus, their evidence shows that the appellant was found moving at night in the same area on 9th February, 1994.

17. The evidence which has been outlined and discussed above shows;-

(1) The deceased Jadiben was the wife of the

appellant.

(2) They had two children but Jadiben was unfaithful and had run away. However, she had returned about two weeks before the date of the incident and had started living with the appellant in the room in the factory premises.

(3) The appellant was also living with the sister of Jadiben.

(4) There was a quarrel between the appellant and Jadiben.

(5) The appellant and Jadiben left their home in the factory at about 4 o'clock on 9th February, 1994.

(6) The appellant returned alone at 10 o'clock in the morning on the next day and did not go to work in the factory.

(7) Jadiben's dead body was found floating in the canal in the morning on 10th February, 1994.

(8) There were injuries on her body which were ante-mortem and were possible by a knife and that her death was due to the injury to the Liver which was sufficient to cause death in the ordinary course of nature.

(9) A knife was discovered from the room of the appellant at his instance and that it was stained with the blood of the same group which was found on the clothes of the deceased.

18. The learned advocate for the appellant submitted that these circumstances are not sufficient and they do not form a complete chain so as to bring the charge home to the appellant. However, in our opinion, the only inference that can be drawn from the above circumstances is that it was the appellant alone who had taken his wife saying that they were going to the village and had killed her and thrown her body into the canal and returned alone next morning. These circumstances are consistent only with the hypothesis of guilt and no other hypothesis. The learned Additional Sessions Judge, therefore, rightly convicted the appellant of the offence under Sections 302 and 201 of the I.P.C. We see no reason to interfere with the same.

19. As far as accused no.2 was concerned, the learned Additional Sessions Judge has given benefit of the doubt to him. The view taken by him is a possible and reasonable view and no ground is made out to reverse the same in the appeal against his acquittal.

20. The result is that both the appeals fail and are dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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